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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| IN RE JACOB B. | 2 CA-JV 2010-0127<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil<br>Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18138402

Honorable Danelle B. Liwski, Judge Pro Tempore

AFFIRMED

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Barbara LaWall, Pima County Attorney
By Kara Crosby
Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Susan C.L. Kelly
Tucson
Attorneys for Minor

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V Á S Q U E Z, Presiding Judge.

**¶1** Jacob B. appeals from the juvenile court's October 2010 disposition minute entry adjudicating him delinquent for driving under the influence of alcohol or drugs and placing him on juvenile intensive probation until his eighteenth birthday. He argues the court erred in denying his motion to suppress evidence obtained during an investigative stop of his vehicle.[1] For the following reasons, we affirm the court's adjudication and disposition.

**¶2** "[W]e review de novo whether police had reasonable suspicion to justify an investigatory stop." *State v. Fornof*, 218 Ariz. 74, ¶ 5, 179 P.3d 954, 956 (App. 2008). In doing so, we consider only the evidence that was presented at the suppression hearing, which we view "in the light most favorable to upholding the juvenile court's factual findings." *In re Ilono H.*, 210 Ariz. 473, ¶ 2, 113 P.3d 696, 697 (App. 2005).

**¶3** So viewed, the evidence established a Tucson resident telephoned 9-1-1 at about 12:30 a.m. to report a silver minivan or sport utility vehicle had been parked in front of his house for about thirty minutes and, during that time, someone had left the vehicle and walked along the side of his house. The 9-1-1 dispatcher remained in telephone contact with the caller and continued to provide information to Tucson police officers as they responded to the call. According to the police dispatch report, the caller stated that windows on the side of the house had been broken during the previous week.

[1]Jacob admitted the allegation of delinquency after the court denied his motion to suppress evidence.

He also clarified that the vehicle then parked on his street was an "older model Aerostar van." While still speaking with the dispatcher, the caller reported another vehicle had pulled up in front of the van, someone got out of that vehicle and entered the van, and the caller observed what he believed to be the flame of a cigarette lighter inside the van.

**¶4** An officer who responded to the dispatch testified he was familiar with the caller's neighborhood, stating, "New houses are being constructed there, and we've had calls there with some vandalism in the past." As the officer was nearing the residence, the caller told the dispatcher both vehicles had driven off, heading east. Less than a minute later, the officer saw a 1989 silver Aerostar van approaching the only traffic outlet, approximately one hundred yards from the caller's address. He then saw Jacob, the van's driver and only occupant, gesture to him in an unusual fashion. The officer initiated a traffic stop and, as he approached Jacob's van, noticed a large amount of smoke carrying the odor of burnt marijuana coming from the driver's window. After further noting that Jacob's eyes were bloodshot, the officer conducted field sobriety tests and placed Jacob under arrest.

**¶5** On appeal, Jacob argues the police officer lacked an "articulable reasonable suspicion" to justify stopping the van and, therefore, all evidence resulting from the stop should have been suppressed. Quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981), he contends the facts and inferences presented at the suppression hearing, taken as a whole, did not provide "a 'particularized or objective basis' to believe that a crime had even been committed, much less that [he] had any involvement [in criminal

activity]." The state maintains the juvenile court correctly concluded that the police officer conducted a valid investigatory stop based on all the circumstances known to him, "including the time of night, the movement around the caller's home, [and] the activity within the vehicle."

**Discussion**

**¶6** A police officer's investigatory stop is permissible under the Fourth Amendment when it is based on "a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989), *quoting Terry v. Ohio*, 392 U.S. 1, 30 (1968). "Our assessment of reasonable suspicion is based on the totality of the circumstances, considering such objective factors as the suspect's conduct and appearance, location, and surrounding circumstances, such as the time of day, and taking into account the officer's relevant experience, training, and knowledge." *Fornof*, 218 Ariz. 74, ¶ 6, 179 P.3d at 956. Although "the Fourth Amendment requires at least a minimal level of objective justification for making the stop," *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000), "the likelihood of criminal activity need not rise to the level required for probable cause," *United States v. Arvizu*, 534 U.S. 266, 274 (2002); *see also State v. O'Meara*, 198 Ariz. 294, ¶ 10, 9 P.3d 325, 327 (2000) ("reasonable suspicion" for investigatory stop "is something short of probable cause"). Rather, to determine whether a police stop was consistent with the Fourth Amendment, a reviewing court should consider whether, given the "'totality of the circumstances,'" the

officer had "a 'particularized and objective basis' for suspecting legal wrongdoing." *Arvizu*, 534 U.S. at 273, *quoting Cortez*, 449 U.S. at 417.

**¶7** The circumstances here support the juvenile court's conclusion that the stop of Jacob's van was justified by reasonable suspicion. Although Jacob argues none of the conduct reported by the caller "constituted criminal activity," such allegations were not required to warrant an investigatory stop.[2] *See Arvizu*, 534 U.S. at 277 (determination of reasonable suspicion "need not rule out the possibility of innocent conduct"); *Wardlow*, 528 U.S. at 125 ("Even in *Terry*, the [lawful] conduct justifying the stop was ambiguous and susceptible of an innocent explanation.").

**¶8** Jacob's extended presence, in and out of his van, in the middle of the night, in a neighborhood known for reports of vandalism, as well as his apparent rendezvous with another vehicle and its occupant, gave rise to a reasonable suspicion that criminal activity might be afoot. Moreover, the specificity of the caller's description of the van and the proximity of Jacob's van to the caller's residence when the officer responded to the call provided "a particularized and objective basis" for stopping Jacob to investigate

[2]Jacob maintains the report that someone had left his vehicle and "walked along side" the caller's house would not "constitute the basis for a criminal trespass charge," apparently because the caller did not specify whether the person was on public or private property at the time.

possible criminal activity.[3] *See Cortez*, 449 U.S. at 417-18 (facts and inferences, taken as whole, must provide basis for "suspecting the particular person stopped of criminal activity").

**¶9** Finding no error in the juvenile court's denial of Jacob's motion to suppress evidence, we affirm the court's adjudication of delinquency and the disposition.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

[3]Although Jacob suggests specific information regarding the make, model, and color of the van was not "made available to law enforcement prior to the stop," we agree with the state that the record contradicts this assertion.